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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,912	06/23/2003	Richard L. Antrim	006401.00399	7581
22908	7590	12/06/2007	EXAMINER	
BANNER & WITCOFF, LTD. TEN SOUTH WACKER DRIVE SUITE 3000 CHICAGO, IL 60606			BLAND, LAYLA D	
		ART UNIT	PAPER NUMBER	
		1623		
		MAIL DATE	DELIVERY MODE	
		12/06/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/601,912	ANTRIM ET AL.	
	Examiner	Art Unit	
	Layla Bland	1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07 August 2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10,34 and 35 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-10,34 and 35 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is a response to applicant's amendment and Declaration of Dr. Perminus Mungara, both submitted August 7, 2007. Claims 1-10, 34 and 35 are pending in this application and are examined on the merits herein.

The following rejections are record are maintained:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-10, 34 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Meyers et al. (US Patent 5,518,739).

Meyers et al anticipate the claims as it teaches a maltodextrin having degree of polymerization between 4 and 27 (co1.3, line 21). Meyers et al also disclose maltodextrin derivatized with dextrin via glycosidic linkages such as α -1,6, β -1,2, β -1,3 and β -1,6 (col.3, lines 22-24). It is inherent property of a dextrin to exist in the form of

dextrose, maltose (two dextrose attached with each other), maltotriose (three dextrose attached with each other), and maltotetraose (four dextrose attached with each other). Myers et al also disclose the hydrogenated starch hydrolyzate known as sorbitol (col.3, lines 49-50). Thus, this meets the process limitations. Regarding claim 35, the new limitation of how the extrusion reaction is performed does not have any patentable weight to the composition claimed in claim 1.

Claims 1-5, 7-10, 34 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshida et al. (US Patent 4,840,807).

Yoshida et al. anticipate the claims as it teaches a maltodextrin having degree of polymerization between 1 and 20 (co1.5, line 30). Yoshida et al also disclose maltodextrin derivatized with dextrin via glycosidic linkages such as α -1,6 and α -1,4 (claim 1). Dextrin is disclosed in the form of dextrose, maltose (two dextrose attached with each other), maltotriose (three dextrose attached with each other), and maltotetraose (four dextrose attached with each other) (col 7, lines 54-62). Thus, this meets the process limitations. Regarding claim 35, the new limitation of how the extrusion reaction is performed does not have any patentable weight to the composition claimed in claim 1.

Claims 1-5, 7-10, 34 and 35 are rejected under 35 U.S.C. 102(e) as being anticipated by Fouache et al. (US Patent 6,630,586).

Fouache et al anticipate the claims as it teaches a maltodextrin having degree of polymerization between 1 and 20 (col 1.5, line 30). Fouache et al also disclose maltodextrin derivatized with dextrin via glycosidic linkages such as α -1,6 and α -1,4 (claim 1). Dextrin is disclosed in the form of dextrose, maltose (two dextrose attached with each other), maltotriose (three dextrose attached with each other), and maltotetraose (four dextrose attached with each other) (col 7, lines 54-62). Thus, this meets the process limitations. . Regarding claim 35, the new limitation of how the extrusion reaction is performed does not have any patentable weight to the composition claimed in claim 1.

Regarding claims 1 and 35, the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 698,227 USPQ 964, 966 (Fed. Cir. 1985).

Response to Arguments

Applicant's arguments and the Declaration of Dr. Perminus Mungara filed August 7, 2007 have been fully considered but they are not persuasive.

Applicant argues that Yoshida et al. does not anticipate the claims because, in the product of Yoshida, there will be nothing other than alpha-1,4 and alpha-1,6 bonds in the finished product, unlike the present invention.

The instant claims are not drawn to a product containing bonds other than alpha-1,4 and alpha-1,6 bonds, so this argument is not relevant.

Applicant argues that, as presented in the declaration of Dr. Perminus Mungara, the products of Meyers and Fouache are different from the product of the present invention.

This is not found persuasive. First, the Nutriose and Fibersol-2 used by Dr. Mungara was not prepared according to the prior art procedures, but was purchased. Thus, the products being compared to the present invention might or might not be the prior art products. Second, Dr. Mungara compared only a few embodiments of the very broadly claimed instant invention. The examples are not commensurate in scope with the claims.

The instant claims are very broad. It is unclear what distinguishes the claimed products from the prior art, what properties the claimed products have, and how one would know if he or she was infringing the claimed invention.

Thus, the rejections made in the previous office action are maintained.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Layla Bland whose telephone number is (571) 272-9572. The examiner can normally be reached on M-R 8:00AM-5:00PM UST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia Anna Jiang can be reached on (571) 272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Layla Bland
Patent Examiner
Art Unit 1623
November 29, 2007

Shaojia Anna Jiang

Supervisory Patent Examiner
Art Unit 1623
November 29, 2007